

MONTANA FIRST JUDICIAL DISTRICT, LEWIS & CLARK COUNTY

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STATE OF MONTANA, ex rel.	)	
DEPARTMENT OF ENVIRONMENTAL	)	
QUALITY,	)	Cause No. BDV-2004-596
Plaintiff,	)	
	)	PARTIAL CONSENT DECREE
-vs-	)	AND ENTRY OF JUDGMENT
	)	
BNSF RAILWAY COMPANY,	)	
KALISPELL POLE AND TIMBER	)	
COMPANY, KLINGLER LUMBER	)	
COMPANY, INC., MONTANA	)	
MOKKO, INC., and DOES 1 to	)	
100,	)	
	)	
Defendants.	)	
	)	

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**I. BACKGROUND**

1. The Montana Department of Environmental Quality (DEQ) filed a complaint in this matter on August 6, 2004, pursuant to Mont. Code Ann. § 75-10-701, et seq. DEQ named as Defendants the BNSF Railway Company (BNSF), Exxon Mobil Corporation, Kalispell Pole and Timber Company (KPTCo) , Klingler Lumber Company, Inc., the Montana Department of Natural Resources and Conservation (DNRC), Montana Mokko, Inc., and Swank Enterprises.

2. DEQ filed an amended complaint in this matter on September 24, 2004, against the same Defendants.

3. In its amended complaint, DEQ seeks (1) to abate an imminent and substantial endangerment to the public health, safety, and welfare and the environment; (2) recovery of remedial action costs incurred and to be incurred by DEQ in connection with the Kalispell Pole and Timber (KPT), Reliance Refining Company (Reliance), and Yale Oil Corporation (Yale) state Superfund facilities (the Facilities); (3) a declaratory judgment to establish the Defendants'

liability for all future cleanup costs that DEQ will incur in connection with these facilities; and (4) penalties from some of the Defendants pursuant to the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA).

4. The KPT facility is located in the Evergreen area of Kalispell in Flathead County, Montana, within the NW¼ of Section 8, Township 28 North, Range 21 West. The historic KPT property boundaries encompass approximately 35 acres.

5. The KPT facility was used for pole de-barking, timber milling, and pole treatment from approximately 1945 to 1990. These operations have resulted in the release or threatened release of pentachlorophenol (PCP), dioxins/furans, petroleum hydrocarbons, and other hazardous or deleterious substances into the environment.

6. The Reliance facility is located east of the KPT facility. The historic Reliance facility boundaries consist of approximately seven acres. The Reliance facility was used as a refinery and cracking plant from the 1920s through about 1958. Some of property within the Reliance facility was leased to the KPTCo from 1969 to 1994. These operations have resulted in the release or threatened release of petroleum hydrocarbons and other hazardous or deleterious substances into the environment.

7. The Yale facility is located south/southeast of the Reliance facility. The historic Yale property boundaries consist of approximately 2.5 acres. The Yale facility was used as a refinery beginning in the 1930s and was used as a bulk fuel storage facility from sometime in the 1940s until about 1978. These operations have resulted in the release or threatened release of petroleum hydrocarbons and other hazardous or deleterious substances into the environment.

8. Contamination from the KPT facility has co-mingled with contamination from the Reliance and Yale facilities.

9. In response to the release or threatened release of hazardous or deleterious substances at or from the Facilities, DEQ undertook remedial actions and incurred remedial action costs, and will continue to undertake remedial actions and incur remedial action costs at the Facilities pursuant to CECRA.

10. Mont. Code Ann. § 75-10-701(4) of CECRA defines a “facility” to include “any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.”

11. Mont. Code Ann. § 75-10-701(8) of CECRA defines “hazardous or deleterious substances” and, based on that definition, includes PCP, dioxins/furans, and petroleum hydrocarbons.

12. Mont. Code Ann. § 75-10-715 of CECRA provides that “the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility: (a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of; (b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of.”

13. KPTCo is jointly and severally liable for remediation of the KPT and Reliance facilities and, to the extent that contamination from either of these facilities has come to be located on or under the Yale facility, KPTCo is liable for the Yale facility. As settlement of this matter and as more fully described below, KPTCo will consent to the entry of judgment as to its liability for the KPT, Reliance and Yale facilities. In this action Defendant BNSF has been adjudicated liable for the releases from the KPT Facility and Defendants DNRC, Swank

Enterprises and Exxon Mobil Corporation have entered into partial consent decrees resolving their liabilities for the KPT, Reliance, and Yale facilities.

14. The KPTCo was dissolved in 1991 and its assets disbursed to the shareholders. The only asset of KPTCo after dissolution was certain insurance policies that may provide coverage for remedial activities. A list of those known insurance policies is attached hereto as Exhibit A.

15. In a May 27, 1999 Agreement, Assignment, and Covenant not to Execute, KPTCo assigned specified rights under those certain insurance policies to BNSF as settlement of *Burlington N. & Santa Fe Ry. Co. v. Kalispell Pole & Timber Co.*, Cause No. CV-97-177-M-DWM, as consideration for BNSF's covenant not to execute judgment against KPTCo as follows:

any and all claims, demands, rights, benefits, and causes of action, including but not limited to, those existing by reason of the negligence, intentional conduct and/or bad faith and/or violations of Mont. Code Ann. § 33-18-242 (1997), that [KPTCo] has or may have against each and every Insurer pursuant to the terms of their policy and/or by virtue of their failure to defend against, indemnify and/or settle [BNSF]'s claims against [KPTCo] arising out of the events related to [Cause No. CV-97-177-M-DWM].

16. The only remaining asset of KPTCo is its rights under those insurance policies not already assigned to BNSF. DEQ and KPTCo understand that those rights include any and all claims, demands, rights, benefits, and causes of action, including but not limited to, those existing by reason of the negligence, intentional conduct and/or bad faith and/or violations of Mont. Code Ann. § 33-18-242 (1997) that KPTCo has or may have against each and every insurer pursuant to the terms of its policy and/or by virtue of its failure to defend against, indemnify and/or settle DEQ's claims against KPTCo arising out of the events related to this action, Cause No. BDV-2004-596. DEQ's understanding, from its own investigation and from

KPTCo's assurances, that KPTCo lacks other assets is a fundamental basis for DEQ's decision to enter into this Consent Decree. Should at any time in the future it becomes known to DEQ that KPTCo has other assets, DEQ, may at its sole discretion withdraw all benefits under this Consent Decree from KPTCo and its former officers, directors and shareholders.

17. DEQ and KPTCo desire to resolve KPTCo's liability in this matter. The Parties recognize, and the Court by entering this Consent Decree finds, that the Parties have negotiated this Consent Decree in good faith, that implementation of the Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair and reasonable and is in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## **II. JURISDICTION**

18. This Court has jurisdiction over the subject matter of this action pursuant to Mont. Code Ann. § 75-10-711. This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

19. This Agreement shall be binding upon DEQ and KPTCo and their successors and assigns. Any change in ownership or corporate or other legal status of either party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is

authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

#### **IV. DEFINITIONS**

20. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CECRA shall have the meaning assigned to them in CECRA. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CECRA" shall mean the Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. §§ 75-10-701, et seq.
- b. "Consent Decree" shall mean this Partial Consent Decree and Entry of Judgment and any attached appendices. This Consent Decree is "partial" in that it does not apply to every defendant in this case.
- c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- d. "DEQ" shall mean the Montana Department of Environmental Quality and any successor departments or agencies of the State of Montana.
- e. "Facilities" shall mean the sites designated by DEQ as the Kalispell Pole and Timber, Reliance Refining Company, and Yale Oil Corporation facilities that include any site or area where contamination has come to be located. These facilities are depicted more particularly on Exhibit B.
- f. "KPTCo" shall mean the Kalispell Pole and Timber Company, a Montana corporation, which was dissolved in 1991.

- g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or an upper or lower case letter.
- h. "Parties" shall mean DEQ and KPTCo.
- i. "Record of Decision" shall mean the DEQ Record of Decision, including all attachments, relating to the Facilities signed by the DEQ Director or his delegee.
- j. "Section" shall mean a portion of this Agreement identified by a roman numeral.

## **V. SETTLEMENT TERMS**

21. KPTCo consents to the Entry of Judgment in the form attached hereto as Exhibit C and agrees to jointly submit the same for the Court's approval within 10 days of the Court's approval of this Consent Decree. Within thirty (30) days of the effective date of this Consent Decree and in the form attached hereto as Exhibit D, KPTCo agrees to offer to BNSF the non-exclusive assignment of KPTCo's rights under the insurance policies described in Exhibit A and any other applicable insurance policy which may provide coverage to KPTCo for the Judgment. If at any time DEQ should request, KPTCo shall, within 30 days, also provide any other liable person or DEQ an offer of assignment of KPTCo's rights under those same insurance policies in the form attached hereto as Exhibit D.

22. At the time of any above-described offer, KPTCo shall send notice that such offer has been made to:

Cynthia D. Brooks  
Legal Counsel  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

23. If BNSF or any other party so offered agrees to the assignment of the subject rights under KPTCo's insurance policies, KPTCo shall provide DEQ notice within 10 days of KPTCo receiving notice of such acceptance.

#### **VI. COVENANT NOT TO SUE OR EXECUTE JUDGMENT BY DEQ**

24. In consideration of the actions that will be performed by KPTCo under the terms of the Consent Decree, and except as specifically provided in Paragraph 25 of this Consent Decree, pursuant to Mont. Code Ann. § 75-10-719, KPTCo (and its former shareholders, officers and directors with respect to their acts on behalf of KPTCo) shall have contribution protection from third parties and DEQ covenants not to sue KPTCo (or its former shareholders, officers and directors with respect to their acts on behalf of KPTCo) for Past and Future Remedial Action Costs at the Facilities and covenants not to execute on the Entry of Judgment. DEQ's covenants not to sue and not to execute are conditioned upon the satisfactory performance by KPTCo of its obligations under this Consent Decree. DEQ's covenants not to sue and not to execute extend only to KPTCo (and its former shareholders, officers and directors with respect to their acts on behalf of KPTCo) and does not extend to any other person.

#### **VII. RESERVATIONS OF RIGHTS BY DEQ**

25. The covenants not to sue and not to execute by DEQ set forth in Paragraph 24 do not pertain to any matters other than those expressly identified therein. DEQ reserves, and this Consent Decree is without prejudice to, all rights against KPTCo with respect to all other matters, including but not limited to the following:

- a. claims based on a failure of KPTCo to meet a requirement of this Consent Decree;



- b. liability arising from the past, present, or future disposal, release, or threat of release at any site or facility, other than the Facilities described herein;
- c. criminal liability;
- d. liability for actions which violate state or federal law, other than CECRA, and which occur during or after implementation of the remedial actions;
- e. liability for active releases at the Facilities that occur after the effective date of this Consent Decree; and
- f. future liability for injunctive relief or administrative order enforcement under Title 75, Chapter 10, Part 7 of the Montana Code Annotated.

26. Nothing in this Consent Decree is intended to be nor shall it be construed as a release, covenant not to sue, covenant not to execute or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Montana may have against any person, firm, corporation or other entity not a signatory to this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY KPTCo**

27. KPTCo and its former shareholders, officers and directors covenant not to sue and agree not to assert any claims or causes of action against DEQ or its contractors or employees with respect to Past or Future Remedial Action Costs or this Consent Decree, including but not limited to:

- a. any claim against DEQ related in any manner to the Facilities; and
- b. any claims arising out of remedial actions at the Facilities, including claims based on DEQ's selection of remedial actions, oversight of remedial actions, or acceptance of plans for such actions.

KPTCo and its former shareholders, officers and directors covenant not to sue shall take effect upon execution of this Consent Decree by the Parties.

#### **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

28. Other than the assignments and potential assignments described in Paragraph 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. This Agreement is not intended to benefit any after-acquired business entities of KPTCo or after-associated individuals of KPTCo. DEQ and KPTCo each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Facilities against any person not a Party hereto. KPTCo assigns all those rights it possesses as against third parties to DEQ except as to its rights against insurance carriers subject to assignment under this Agreement.

29. The Parties agree, and by entering this Consent Decree this Court finds, that KPTCo (and its former shareholders, officers and directors with respect to their acts on behalf of KPTCo) is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Mont. Code Ann. § 75-10-719, MCA, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Remedial Action Costs, Future Remedial Action Costs for the Facilities and remedial action costs incurred by other parties prior to the effective date of this Consent Decree.

30. In any subsequent administrative or judicial proceeding initiated by DEQ, or by the State of Montana on behalf of DEQ, for injunctive relief, recovery of remedial action costs, or other appropriate relief relating to the Facilities, KPTCo shall not assert, and may not

maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by DEQ set forth in Section VI.

#### **X. RETENTION OF RECORDS/ACCESS TO INFORMATION**

31. Until ten (10) years after the effective date of this Consent Decree, KPTCo shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to remedial actions taken at the Facilities or to the liability of any person for remedial actions conducted and to be conducted at the Facilities, regardless of any record retention policy to the contrary. KPTCo agrees to provide DEQ access to the records at all times the records are in KPTCo's possession or control. KPTCo also agrees to freely share with DEQ any information KPTCo may possess which would facilitate DEQ's determination of final remedial alternatives or implementation of those remedial alternatives.

32. After the conclusion of the document retention period in the preceding paragraph, KPTCo shall notify DEQ at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by DEQ, KPTCo shall deliver any such records or documents to DEQ. KPTCo may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by state law. If KPTCo asserts such a privilege, it shall provide DEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and

recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with DEQ shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to DEQ in redacted form to mask the privileged information only. KPTCo shall retain all records and documents that it claims to be privileged until DEQ has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in KPTCo's favor.

33. By signing this Consent Decree, KPTCo certifies that, to the best of its knowledge and belief, it has:

- a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to DEQ, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to insurance for, the ownership of, the operation of, or the control of the Facilities, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Facilities;
- b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Facilities, after notification of potential liability or the filing of a suit against KPTCo regarding the Facilities; and
- c. fully complied with any and all DEQ requests for information regarding the Facilities.

34. As a condition to DEQ's agreement to enter into this Consent Decree, KPTCo covenants and agrees that it will not communicate in any way or otherwise provide information relating to the Facilities to any other party to this action without first providing DEQ's attorneys the opportunity to be present during such communications or to review any requested written information before transmitting it to any other party to this action. KPTCo further agrees that it will not object to DEQ's selection of remedial actions, oversight of remedial actions, or acceptance of plans for such actions.

#### **XI. NOTICES AND SUBMISSIONS**

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to DEQ and KPTCo.

As to DEQ:

Cynthia D. Brooks  
Legal Counsel  
Montana DEQ  
P.O. Box 200901  
Helena, MT 59620-0901

As to KPTCo:

Marvin Hobbs  
c/o Karl Rudbach  
Kaufman, Vidal, Hileman & Ramlow, P.C.  
P.O. Box 728  
Kalispell, MT 59903-0728

## **XII. INTEGRATION/APPENDICES**

36. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding between DEQ and KPTCo with respect to the settlement embodied in this Consent Decree. KPTCo and DEQ acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

## **XIII. EFFECTIVE DATE**

37. The effective date of this Consent Decree shall be the date upon which the Court enters this Consent Decree, except as otherwise provided herein.

## **XIV. RETENTION OF JURISDICTION**

38. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

## **XV. MODIFICATION**

39. Except as otherwise provided in this Section, no modifications shall be made to provisions of this Consent Decree without written notification to and written acceptance by DEQ and KPTCo. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or modify this Consent Decree upon the motion of a Party.

## **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

40. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. DEQ may modify or withdraw its consent to this

Consent Decree if comments received disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper or inadequate.

41. If for any reason the Court should decline to enter this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties except those parts of the Consent Decree that are specifically effective upon execution of the Consent Decree by the Parties.


#### **XVII. AUTHORITY TO SIGN ON BEHALF OF KPTCO**

42. Tyra Hobbs was the Secretary/Treasurer of KPTCo and from the time of its dissolution is the sole surviving former officer of KPTCo. The parties agree and the Court finds that she is the appropriate person to sign this Consent Decree on behalf of KPTCo and to bind KPTCo to the terms contained herein and the offers of assignments required under this Agreement.


**IT IS SO AGREED:**

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

DATED: 1/10/08

By:   
Richard H. Opper  
Director

DATED: 1/10/08

By:   
Cynthia D. Brooks  
Special Assistant Attorney General

**KALISPELL POLE AND TIMBER COMPANY**

DATED: 1-9-08 By: Tyra Hobbs  
Tyra Hobbs, Secretary Treasurer

DATED: 1-9-08 By: Karl Rudbach  
Karl Rudbach, Counsel

**IT IS SO ORDERED:**

DATED: \_\_\_\_\_  
Jeffrey M. Sherlock  
District Judge



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1. Reviews  
 2. Discussion  
 3. American Cinema

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240108  
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 American Express

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April 17

W. Lloyd Garrison  
Anti-Slavery Trs.

C15-4641  
PF 871196

American College  
August 1941 to 1942

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PF 871370  
PF 879600  
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Fire & Marine  
Placemat INS. Co.  
Firemen's  
Firemen's

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DEQ(KPT) 21:00012

**EXHIBIT**

**tables.**

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Year  
1966  
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F-6172434  
4-F-241575  
MC 679634

1967  
F-6172437  
MC 679634

1968  
F-6172437  
MC 679634  
4F-241575

1969  
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F147034  
NF614162

1971  
5117476

Insurance Company

Fireman's  
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Phoenix

Fireman's Ins.  
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Fireman's  
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Travelers Ins. Co.  
Transamerica  
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Tri-Co Insurance  
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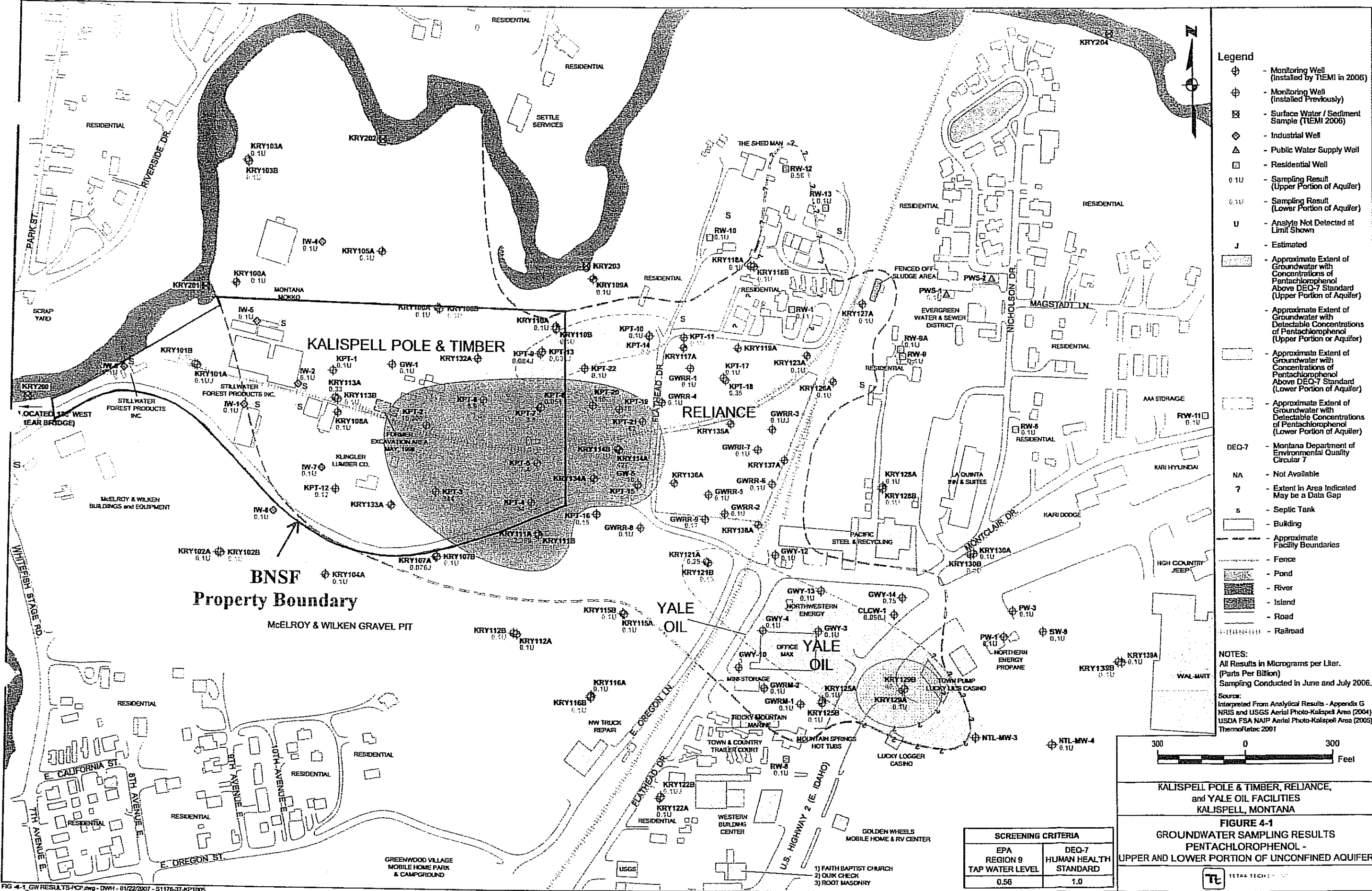
Tri-Co Insurance

Reference

Year	Policy No.	Insurance Company	Agency
1972	F 151330 NF-855300 6828922	United Pac. Fd. Northwestern National Transamerica	Tri-co Insurance Tri-co Insurance Tri-co Insurance
1973	FF 1317118 6828922 5117476	United Pac. Fd. Insurance Transamerica Ins. Transamerica Ins.	Tri-co Insurance Tri-co Insurance Tri-co Insurance
1974	M 829711 117434151246 6828922	Transamerica Ins. Alaska Pac. Fd. Insurance Transamerica Ins.	Tri-co Insurance Tri-co Insurance Tri-co Insurance
1975	AMP 146719 6828922 NF 912085	U.S. Fidelity Transamerica Ins. Northwestern National	Tri-co Insurance Tri-co Insurance Tri-co Insurance
1976	M 829711 146719 1176-34151-265	Transamerica Ins. Lumbermen's Underwriting Alaska Pacific	Tri-co Insurance Tri-co Insurance Tri-co Insurance
1977	M 838694 11783415102105 A 110172695	Transamerica Ins. Alaska Pacific Lumbermen's Underwriting	Tri-co Insurance Tri-co Insurance Tri-co Insurance

Year	Policy No.	Insurance Company	Agency
1978	117830415102105	Alaska Pac. A.C.	Tu. Co. Insurance
	M846247	Alaska Pac. A.C.	Tu. Co. Insurance
	34151265	Alaska Pac. A.C.	Rollins Burdick Hunter
1979	M855562	Alaska Pac. A.C.	Tu. Co. Insurance
	172695	Alaska Pac. A.C.	Tu. Co. Insurance
	1179-34151-02105	Alaska Pac. A.C.	Tu. Co. Insurance
1980	M855562	Alaska Pac. A.C.	Tu. Co. Insurance
	172695	Alaska Pac. A.C.	Tu. Co. Insurance
1981	M867249	Alaska Pac. A.C.	Tu. Co. Insurance
	191836	Alaska Pac. A.C.	Tu. Co. Insurance
	500736.533	Alaska Pac. A.C.	Tu. Co. Insurance
1982	191836	Alaska Pac. A.C.	Tu. Co. Insurance
	503614527	Alaska Pac. A.C.	Tu. Co. Insurance
1983	MN 002944	Alaska Pac. A.C.	Tu. Co. Insurance
	EL 509995	Alaska Pac. A.C.	Tu. Co. Insurance
	FJ 472495 CCA	Alaska Pac. A.C.	Tu. Co. Insurance

Year 1984	Policy No. M21L 405249 81FJ 48760000A 5L557765CCA AMP 300775	Insurance Company M21L 405249 81FJ 48760000A 5L557765CCA AMP 300775	Agency Tri-Geo Ins. Tri-Geo Ins. Tri-Geo Ins. Western States Agency
1985	LP C 38 99 03 81BY100182244B2A	United Pacific M21L 405249 81FJ 48760000A 5L557765CCA AMP 300775	Insurance Tri-Geo Ins. Tri-Geo Ins. Tri-Geo Ins. Western States Agency
1986	LP C 391449 00	United Pacific M21L 405249 81FJ 48760000A 5L557765CCA AMP 300775	Insurance Tri-Geo Ins. Tri-Geo Ins. Tri-Geo Ins. Western States Agency
1987	LP 7285301 00 LP 1124123 AMP 303843	United Pacific M21L 405249 81FJ 48760000A 5L557765CCA AMP 300775	Insurance Tri-Geo Ins. Tri-Geo Ins. Tri-Geo Ins. Western States Agency
1988	BA 86 22677 CP 86 22677 21L 86 22677	SAFE SAFE SAFE	Insurance Tri-Geo Ins. Tri-Geo Ins. Tri-Geo Ins.
1989			



- Legend**
- Monitoring Well (Installed by TTEM in 2006)
  - Monitoring Well (Installed Previously)
  - Surface Water / Sediment Sample (TTEM 2006)
  - Industrial Well
  - Public Water Supply Well
  - Residential Well
  - Sampling Result (Upper Portion of Aquifer)
  - Sampling Result (Lower Portion of Aquifer)
  - Analyte Not Detected at Limit Shown
  - Estimated
  - Approximate Extent of Groundwater with Concentrations of Pentachlorophenol Above DEQ-7 Standard (Upper Portion of Aquifer)
  - Approximate Extent of Groundwater with Detectable Concentrations of Pentachlorophenol (Upper Portion of Aquifer)
  - Approximate Extent of Groundwater with Concentrations of Pentachlorophenol Above DEQ-7 Standard (Lower Portion of Aquifer)
  - Approximate Extent of Groundwater with Detectable Concentrations of Pentachlorophenol (Lower Portion of Aquifer)
  - DEQ-7 - Montana Department of Environmental Quality Circular 7
  - NA - Not Available
  - 7 - Extent in Area Indicated May be a Data Gap
  - S - Septic Tank
  - Building
  - Approximate Facility Boundaries
  - Fence
  - Pond
  - River
  - Island
  - Road
  - Railroad

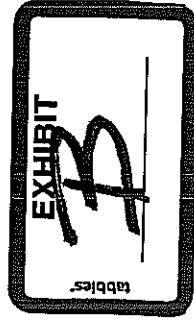
**NOTES:**  
All Results in Micrograms per Liter.  
(Parts Per Billion)  
Sampling Conducted in June and July 2006.  
Source:  
Interpreted From Analytical Results - Appendix G  
NRIS and USGS Aerial Photo-Kalispell Area (2004)  
USDA FSA NAIP Aerial Photo-Kalispell Area (2005)  
ThermoFletac 2001



KALISPELL POLE & TIMBER, RELIANCE, and YALE OIL FACILITIES  
KALISPELL, MONTANA

**FIGURE 4-1**  
GROUNDWATER SAMPLING RESULTS  
PENTACHLOROPHENOL -  
UPPER AND LOWER PORTION OF UNCONFINED AQUIFER

SCREENING CRITERIA	
EPA REGION 9 TAP WATER LEVEL	DEQ-7 HUMAN HEALTH STANDARD
0.56	1.0



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Marc G. Buyske  
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Cynthia D. Brooks  
Special Assistant Attorney General  
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
1100 North Last Chance Gulch  
P.O. Box 200901  
Helena, MT 59620-0901  
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Telefax: (406) 841-5050

*Attorneys for Plaintiff*

**MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY**

STATE OF MONTANA ex rel.  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY,

Plaintiff,

vs.

BNSF RAILWAY COMPANY; KALISPELL  
POLE AND TIMBER COMPANY;  
KLINGLER LUMBER COMPANY, INC.;  
MONTANA MOKKO, INC.; and DOES 1 to  
100,

Defendants.

Cause No.: **BDV-2004-596**

**CONSENT TO ENTRY OF JUDGMENT  
AGAINST KALISPELL POLE AND  
TIMBER COMPANY**



Plaintiff State of Montana ex rel. Department of Environmental Quality, ("DEQ"), and Defendant Kalispell Pole and Timber Company, ("KPTCo"), having jointly filed with this Court their Partial Consent Decree, dated January 10, 2008, hereby consent to the entry of judgment against KPTCo and in favor of DEQ pursuant to such Partial Consent Decree and as provided in the proposed Order and Judgment attached as Exhibit 1 to this Consent to Entry of Judgment. DEQ and KPTCo jointly request that the Court enter judgment against KPTCo in the form attached at its earliest opportunity.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2008.

---

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UDA P.C.  
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Helena, MT 59624

*Attorneys for Plaintiff State of Montana ex rel.  
Department of Environmental Quality*

---

Karl K. Rudbach  
Kaufman, Vidal, Hileman & Ramlow, P.C.  
525 Railway Street, Suite #200  
Whitefish, MT 59937

*Attorney for Defendant Kalispell Pole and Timber  
Company*



## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Consent to Entry of Judgment against Kalispell Pole and Timber Company* was served, postage prepaid via first class U.S. mail on this \_\_\_\_ day of \_\_\_\_\_, 2008, upon the following:

Cynthia D. Brooks  
Montana Department of Environmental Quality  
Remediation Division  
P.O. Box 200901  
Helena, MT 59620-0901  
Attorney for Plaintiff DEQ

James M. Ramlow  
Karl K. Rudbach  
Kaufman, Vidal, Hileman & Ramlow, P.C.  
525 Railway Street, STE. #200  
Whitefish, MT 59937  
Attorney for Defendant Kalispell Pole and Timber Company

Paul A. Sandry  
Johnson, Berg, McEvoy & Bostock, PPLP  
221 First Avenue East  
PO Box 3038  
Kalispell, MT 59903-3038  
Attorney for Defendant Klingler Lumber

Leo Berry  
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Chad E. Adams  
Mark D. Etchart  
Browning Kaleczyc Berry & Hoven P.C.  
139 North Last Chance Gulch  
Helena, MT 59601  
Attorney for Defendant BNSF Railway

Gregory A. Van Horssen  
Keller, Reynolds, Drake, Johnson & Gillespie, P.C.  
Guardian Bldg., Third Floor  
50 South Last Chance Gulch  
P.O. Box 598  
Helena, MT 59624  
Attorney for Montana Mokko, Inc.

---

Jeri L. Hoffman  
Certified Paralegal

**MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY**

STATE OF MONTANA ex rel. DEPARTMENT OF ENVIRONMENTAL QUALITY,  Plaintiff,  vs.  BNSF RAILWAY COMPANY; KALISPELL POLE AND TIMBER COMPANY; KLINGLER LUMBER COMPANY, INC.; MONTANA MOKKO, INC.; and DOES 1 to 100,  Defendants.	Cause No.: <b>BDV-2004-596</b>  Jeffrey M. Sherlock  <b>ENTRY OF JUDGMENT AGAINST KALISPELL POLE AND TIMBER COMPANY</b>
--	---

Pursuant to the Consent to Entry of Judgment jointly filed with this Court by Plaintiff State of Montana ex rel. Department of Environmental Quality ("DEQ") and Defendant Kalispell Pole and Timber Company ("KPTCo"), dated January 10, 2008, and finding good cause, this Court enters the following Order and Judgment.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. KPTCo is hereby adjudged a person jointly and severally liable under Section 75-10-715, Montana Code Annotated ("MCA") for the releases or threatened releases of hazardous or deleterious substances at the Kalispell Pole and Timber facility, Reliance Refining Company

facility, and Yale Oil Corporation facility (collectively the “KRY” site) as described in the Partial Consent Decree on file with this court, dated January 10, 2008 and approved by the Court on \_\_\_\_\_. Those releases and the resulting contamination of the soil and groundwater beneath the KRY site are also hereby adjudged to be a public nuisance and pollution of the state waters for which KPTCo is liable.

2. DEQ is awarded Judgment against KPTCo as a joint and severally liable person on the First, Second and Fourth Causes of Action alleged in DEQ’s Amended Complaint and an order of abatement is hereby entered against KPTCo, as provided in Sections 75-10-711(8), 27-30-202(c) and 75-5-612, MCA, to abate the imminent and substantial endangerment to the public health, safety, welfare, or the environment, the public nuisance and the pollution of state waters resulting from the releases and resulting contamination described in paragraph 1 of this Order and Judgment in the manner and to the extent provided in the DEQ’s Record of Decision for the KRY site dated \_\_\_\_\_.

3. DEQ is awarded judgment against KPTCo as a joint and severally liable person on the Third Cause of Action alleged in DEQ’s Amended Complaint for DEQ’s past remedial action costs, including attorney’s fees and interest, incurred and invoiced pursuant to Section 75-10-722, MCA through the date of this Order for the KRY site in the amount of \_\_\_\_\_. To the extent DEQ has recovered these past remedial action costs for the KRY site from other person(s), it may not recover them from KPTCo.

4. This Order and Judgment is entered as a declaration of DEQ’s rights and liabilities with respect to KPTCo as alleged in DEQ’s Amended Complaint and pursuant to Section 75-10-722(5), MCA, and Sections 27-8-101 through 313, MCA, as requested in the Sixth Cause of Action alleged in DEQ’s Amended Complaint and DEQ is awarded judgment against KPTCo as

a joint and severally liable person for DEQ's future remedial action costs, including attorney's fees and interest, incurred and invoiced pursuant to Section 75-10-722, MCA after the date of this Order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

---

Honorable Jeffrey M. Sherlock  
District Court Judge

cc: R. Allan Payne, Cynthia D. Brooks, Karl Rudbach, Paul A. Sandry, Greg Van Horssen, Oliver H. Goe

DATE

Mark Stehly, Asst. V.P.  
BNSF Railway Company  
Operations Office Bldg., Second Floor  
2600 Lou Menk Drive  
Fort Worth, TX 76131

Re: *Montana ex rel. Department of Environmental Quality v. BNSF Railway Company, et al.*  
Montana First Judicial District Cause No. BDV 2004-596

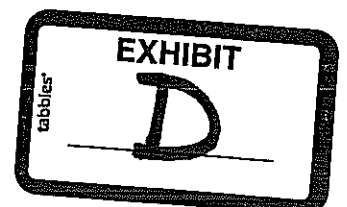
OFFER OF ASSIGNMENT

Dear Mr. Stehly,

Pursuant to the Consent Decree dated January 10, 2008, between the Montana Department of Environmental Quality ("DEQ") and the Kalispell Pole and Timber Company ("KPTCo"), a dissolved corporation, on file with the court in the above-described action, KPTCo hereby offers a nonexclusive assignment of the following assets to BNSF Railway Company:

Any and all claims, demands, rights, benefits, and causes of action, including but not limited to those existing by reason of the negligence, intentional conduct and/or bad faith and/or violations of Mont. Code Ann. § 33-18-242 (2007), that KPTCo has or may have against each and every one of its insurers pursuant to the terms of their policy and/or by virtue of their failure to defend against, indemnify and/or settle DEQ's claims against KPTCo arising out of the events related to Montana's First Judicial District Cause No. BDV 2004-596.

A list of those known insurers and policies are attached hereto as Exhibit A.



To accept this assignment, BNSF's authorized representative must sign below where indicated and return this original letter to Cynthia Brooks, Legal Counsel to DEQ, so that it is received by her at the following address no later than ten (10) days from the date of this letter.

Cynthia D. Brooks  
Legal Counsel  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-0901

If this offer is not accepted within 10 days in the manner described above, the offer is considered automatically withdrawn. Please contact Ms. Brooks should you have any questions regarding this offer.

Sincerely,

Tyra Hobbs  
Secretary/Treasurer  
Kalispell Pole and Timber Company

Accepted:

---

Signature

---

Print Name:

Print Title:

BNSF Railway Company's Authorized Representative

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Dated